

Personal Service Contracting in Kentucky



Personal Service Contracts Memoranda of Agreement



Laws & Policies

KRS 45A.690 – Definitions

KRS 45A.695 – PSC Procedures

KRS 45A.700 – Exemptions (PSC less than \$10,000 or
MOA less than \$50,000 filed for
informational purposes only)

KRS 45A.705 – Government Contract Review Committee
(GCRC)

FAP 111-43-00 – Personal Service Contracts

FAP 111-44-00 – Memoranda of Agreement

Government Contract Review

Committee KRS 45A.705

- (1) There is hereby created a permanent committee of the Legislative Research Commission to be known as the Government Contract Review Committee.
- (4) All proposed personal service contracts, tax incentive agreements, and memoranda of agreement received by the Legislative Research Commission shall be submitted to the committee to:
 - (a) Examine the stated need for the service or benefit to the Commonwealth of the motion picture or entertainment production;
 - (b) Examine whether the service could or should be performed by state personnel, for personal service contracts and memoranda of agreement;
 - (c) Examine the amount and duration of the contract or agreement; and
 - (d) Examine the appropriateness of any exchange of resources or responsibilities.

Government Contract Review Committee Policies

Pursuant to KRS 45A.725, the GCRC has established policies which govern rates payable for certain professional services; hourly rates v. travel expenses; multiyear contracts and contract amendments. These are located on the GCRC webpage and impact any contract established under KRS 45A.690 where applicable.

<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

GCRC Policies

- Policy Statement #98-1 Hourly Rates v. Travel Expenses Policy
- Policy Statement #99-1 Legal Services: Duties and Maximum Rate Schedule
- Policy Statement #99-2 Appraisal Services: Duties and Maximum Rate Schedule
- Policy Statement #99-3 Auctioneer Services: Duties and Maximum Rate Schedule
- Policy Statement #99-4 Multiyear Government Contracts
- Policy Statement #99-5 Auditing Services: Duties and Maximum Rate Schedule
- Policy Statement #00-6 Personal Service Contract Amendment Policy

Personal Service Contract (PSC)

"Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount.

KRS 45A.690

PSC

- Used to establish a contract with a private entity (including non-profit organizations).
- Must go through a competitive process OR have sole source/not practical bid approval from the Secretary of the Finance and Administration Cabinet or his designee.
- May not be used to contract with a public entity.

PSC

Subject to GCRC unless exempt by statute or an exemption granted by the Committee.

Statutory exemptions are listed in **KRS 45A.690**

eMARS PSC Documents

PON2

PSC's subject to GCRC review are created as PON2 documents.

PO2

PSC's not subject to GCRC review are created as PO2 documents.

PSC Process

FAP 111-43-00

- Agency Issues RFP.
- Agency Awards Contract.
- Agency Obtains Signatures.
- Agency Submits in eMARS.
- FAC Reviews, Approves and Files with Government Contract Review Committee.



EO1's are not part of FAP 111-43-00 but are **required prior to the issue of an RFP*

Issue RFP

FAP 111-43-00 (a)

An agency desiring to procure a professional service shall issue a Request for Proposals (RFP) in the state's procurement system. An agency shall post the RFP to the Commonwealth's eProcurement web site for a minimum of seven (7) days.



Request for Proposal

KRS 45A.695 (3)

Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.

Request for Proposal

RFP requirements must not be overly restrictive and/or exclusionary. Such procurements go against the spirit and intent of KRS 45A, the Kentucky Model Procurement Code.

RFP - PSC Templates

Request for Proposal (RFP) and Personal Service Contract (PSC) templates are available at the following link:

<http://finance.ky.gov/internal/eMARS/procurement.htm>

Contract Award

FAP 111-43-00

- (b)** The agency shall review the proposals received and record a determination of the qualification rankings of the offerors based on the evaluation factors set forth in the RFP. The determination shall be documented in the Bid Evaluation of the state's procurement system* by the contract agency.

*currently eMARS

Contract Award

FAP 111-43-00 (d)

The agency shall award a contract electronically from a bid evaluation in the state's procurement system. The contract shall include all terms and conditions agreed upon; the sworn statement regarding campaign finance laws required by KRS 45A.110(2) and 45A.115; the statement regarding revealing of violations of and compliance with certain KRS chapters required by KRS 45A.485; the Legislative Research Commission (LRC) Proof of Necessity (PON) form; language regarding access to documents required by 200 KAR 5:314; and language of KRS 45A.695(7) regarding payment and cancellation clause required by 45A.695(1). If any changes are made to the agreement along the electronic route, a new copy shall be forwarded to the second party for agreement to the changes

Required Affidavit for Bidders or Offerors

The signed and notarized Required Affidavit for Bidders or Offerors must be attached as a PDF to the contract header.

The Affidavit is posted on the eProcurement website: <http://eprocurement.ky.gov/attachments.htm>

FAP 111-43-00 (f)

SIGNATURES

The agency shall maintain the original contract, signed by both parties, and the contract shall be available for review upon request.



SUBMITTAL

The electronic contract shall be forwarded through the agency and the Finance and Administration Cabinet for appropriate approvals.

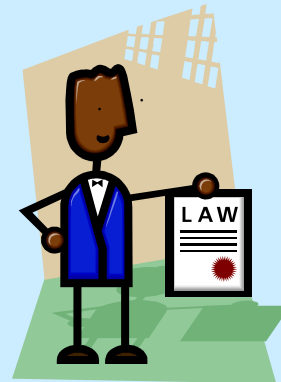
FAP 111-43-00(f)

The Finance and Administration Cabinet shall file the contract with GCRC.

*PON2 documents are filed with GCRC upon final approval in eMARS.

Legal PSC Approvals

PSC's for Legal Services require an additional eMARS approval from the Governor's Office of Legal Services and are filed with the GCRC after that approval has been applied.



Auditing PSC's

FAP 111-43-00-02

A Personal Service Contract for auditing services shall not be established until the Auditor of Public Accounts has declined in writing to perform the service or has failed to respond within thirty (30) days to a written request for an audit. **(KRS 45.149).**

*Letter from the Auditor of Public Accounts declining to perform the audit must be attached to the header of the eMARS PON2.

Sole Source Requests

Agencies requesting a noncompetitive procurement must submit a signed letter addressed to the FAC Secretary, through the OPS Executive Director with the information required by FAP 111-43-00-03. Letters shall be sent directly to the OPS Professional Services Contract Administrator via fax or email ***with the approved EO1 attached.***

Sole Source Request Letter

FAP 111-43-00-03

- Approval of the agency head or secretary of the requesting cabinet or agency;
- A description of the needed service and sole source justification;
- An estimate of the planned amount of work involved;
- An estimate of the contract cost;
- Agency contact person, and;
- Verification of the unavailability of Commonwealth personnel to perform the service.

Memorandum of Agreement (MOA)

"Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth that involves an exchange of resources or responsibilities to carry out a governmental function.

KRS 45A.690

MOA

- Used to establish contracts with a governmental body or political subdivision and do not have to go through a competitive process.
- May not be used for a contract with a private entity or non-profit organization, such contracts must be a PSC.
- Subject to GCRC review unless exempt by statute or an exemption granted by the Committee.
- Statutory exemptions are listed in KRS 45A.690

eMARS MOA Documents

PON2

MOA's subject to GCRC review are created as PON2 documents.

PO2

MOA's not subject to GCRC review are created as PO2 documents.

MOA Process

FAP 111-44-00

- Agency Creates MOA.
- Agency Obtains signatures.
- Agency Submits in eMARS.
- FAC Reviews, Approves and Files with LRC Government Contract Review Committee.



EO1's are not part of FAP 111-44-00 but are **required*

MOA

FAP 111-44-00-02

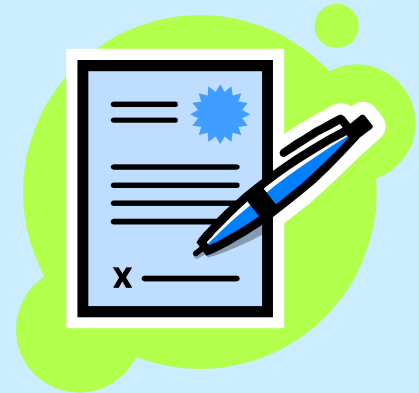
All Memoranda of Agreement shall be created in the state's procurement system*. The contract shall include all terms and conditions agreed upon; the sworn statement regarding campaign finance laws required by KRS 45A.110(2) and 45A.115; the statement regarding revealing of violations of and compliance with certain KRS KRS chapters required by KRS 45A.485; the Legislative Research Commission (LRC) Proof of Necessity (PON) form; language regarding access to documents required by 200 KAR 5:314; and language of KRS 45A.695(7) regarding payment and cancellation clause required by 45A.695(1).

*currently eMARS.

FAP 111-44-00-03

SIGNATURE AND SUBMITTAL

After the contract is created, the agency shall secure the signatures of the first and second parties and electronically route the agreement to the Personal Service Contract Office of the Office of Material and Procurement Services.



FAC Review and Approval

FAP 111-44-00-03

The document shall be reviewed and approved electronically by the Finance and Administration Cabinet, Office of General Counsel, and the secretary of the Finance and Administration Cabinet. The Finance and Administration Cabinet shall file the contract with the Government Contract Review Committee.

LRC

Government Contract Review Committee

KRS 45A.695

- (1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body, until notification of the personal service contract is filed with the committee.
- (8) In the event of a **governmental emergency** as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee,
- (9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contract immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.

Governmental Emergency

KRS 45A.690

“Governmental emergency” means an unforeseen event or set of circumstances that creates an emergency condition.

Governmental Emergency

KRS 45A.095(3)

An emergency condition is a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events. **The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation or protection of property, or the health or safety of any person.**

Emergency Effective Dates

Agencies requesting an emergency effective date shall submit a letter to the FAC Secretary describing the circumstances that required the vendor to start work prior to filing the contract with the GCRC. If the request is approved by FAC, the approval must be attached to the header of the eMARS document and filed with the GCRC.

Emergency Effective Dates

Requests for emergency effective dates cause concern for the GCRC. Committee staff are advised to scrutinize all such requests for compliance with Kentucky law. Agencies are frequently required to testify before the committee regarding the late filing of their contracts. Agencies should make every effort to eliminate these requests.

KRS 45A.700

- PSC'S \$10,000 or less during a fiscal year are exempt from LRC GCRC review and have 30 days from the effective date to be filed with the GCRC for informational purposes only.
- MOA's \$50,000 or less during a fiscal year are exempt from LRC GCRC review and have 30 days from the effective date to be filed with the GCRC for informational purposes only.

LRC GCRC

- Meetings are normally held the second Tuesday of the month.
- PON2's in eMARS Final phase by the last working day of the previous month are reviewed.
- Agencies are contacted directly by GCRC staff to appear before the committee to address any issues raised by a committee member.
- Agency staff appearing before the committee should have a thorough knowledge of the contract being reviewed.

eMARS Reminders

- EO1 approval is required for all contracts and must be attached to the contract header as a PDF file.
- Documents must be assembled after any revisions are made.
- Contract modifications must be assembled as a MOD.
- Correct Default Form must be selected.
- Service dates entered on each commodity line must be for the entire contract period.



Proof of Necessity Reminders

- Source of funds must equal the contract total amount.
- If source of funds is “other”, explanation must be provided.
- Acronyms should be defined on the PON.
- Description of Work should be brief but explain fully the work being performed.
- Award justification must be completed.
- EV document number must be provided (if applicable).
- Agency Contact name and telephone number must be provided.



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